IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

WP No. 14436 of 2006

Between :

M/s.Uma Electronic Corporation .. Petitioner

And

Commercial Tax Officer,
Governorpet Circle,
Vijaywada and two others .. Respondents

Dated : 14th July 2006.

JUDGMENT : (per JC,J)

Aggrieved by a decision of the third respondent – Joint Commissioner (CT) Legal, Hyderabad, in rejecting the stay application of the petitioner by his order dated 28-06-2006, the present writ petition is filed.

2. The petitioner is a dealer on the rolls of the 1st respondent-Commercial Tax Officer, Vijayawada, carrying business in electronic goods. For the assessment year 2003-04, the 1st respondent completed the assessment by his order dated 17-09-2005. It appears that on 30-12-2003, there was an inspection on the premises of the petitioner and the Inspecting Officers noticed certain irregularities in the accounts of

the petitioner pertaining to the above mentioned assessment year. As a consequence of it, the petitioner's case for the assessment year 2003-04 came to be reassessed by an order 17-09-2005. On completion of the assessment, a show cause notice proposing to impose penalty was also issued to the petitioner. On receipt of the objections of the petitioner, a final order imposing penalty was passed on 14-02-2006.

3. Challenging the said order, the petitioner carried the matter in appeal before the 2nd respondent-Appellate Deputy Commissioner (CT), Vijayawada, and the same is still pending. During the pendency of the said appeal, the petitioner also moved an application before the 2nd respondent praying that the recovery of the penalty be stayed, which was rejected on 31.5.2006. Thereupon, the petitioner carried the matter before the 3rd respondent. The 3rd respondent by his order dated 28-06-2006, dismissed the revision of the petitioner. Hence, the present writ petition.

4. Heard the learned counsel for the petitioner and the learned Government Pleader for Commercial Taxes.

5. There is a time gap of approximately six months between the date of reassessment order and the order of imposing penalty on the petitioner. A Full Bench of this Court laid down the law holding that there must be some reasonable proximity between the date of the reassessment and the order of imposing penalty. The question whether the gap of six months can be classified as reasonable gap between the orders of assessment and imposing of penalty is not to be decided in this

case and a matter has to be decided in the appeal pending before the 2nd respondent. Admittedly, the entire amount of tax pursuant to the reassessment is already paid.

6. In the circumstances, we are of the opinion that the matter can be disposed of at this stage directing the respondents not to recover the amount of penalty pursuant to the decision of the 1st respondent dated 14-02-2006 pending disposal of the appeal before the 2nd respondent.

7. Accordingly, the writ petition is disposed of with the aforementioned direction. No costs.

(J.CHELAMESWAR, J)

(D.APPARAO, J)

14th July, 2006.
Knk